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Legal DEPARTMENT

A BRANCH

Subject:— Criminal Appeals in the High Court B'bay against the order of — acquittals from Belgaum Distt.

File No. Cr A Bel/45

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Judgment recorded by the High Court in Criminal Appeal No. 411 of 1944 in the case of Imperator Vs. Appanna Babanna Rayyaji No.1; and Magbul Sultansab Kalwant No.2.

The Government Pleader for the Appellant, the Govt. of the Province of Bombay.

Mr. B.M.Kalagate, Advocate for the accused.

10-4-45

(Coram: Divatia and Bavdekar, JJ).

Oral Judgment (per Divatia.J):- The Government have filed this appeal against the order of acquittal passed by the First Class Magistrate, Gokak-Hukeri. The accused was charged with the offence of breach of the ~~terms of the~~ Foodgrains Control Order and the terms of the licence under that order. The learned Magistrate found on the evidence that the first accused sold more than 20 payalies in one transaction to accused No.2 on the 24th December 1944, who purchased the quantity and that the two accused became liable for contraven-tion of clauses (2) and (3) of Foodgrains Control Order, 1942. The learned Magistrate was however of the opinion that there was no penal clause in that rule which gave clear intention of the nature of the sentence to be awarded. According to him the only punishment was the cancellation of licences under clause (6). He further thought that there was no mention in the order as to what class of Magistrate was to try the accused and that the person who contravenes is liable and that the licence only be cancelled.

The learned Magistrate does not seem to have seen the provisions of Rule 81, clause (4) of the Defence of India Rules. It is provided in sub-rule (4) that any person contraven-ing any order made under Rule 81 he shall be punishable for a term which may extend to three years, or with fine, or with both.

It is quite clear that the Foodgrains Control order is passed under rule 81, sub-rule (2), and clause (6) of that Order says that no person being the holder of a licence issued under the Order shall contravene any of the conditions

mentioned in Form A; and if such person contravenes any such conditions, then without prejudice to any other action that may be taken against him, his licence may be cancelled by order of an ~~XXfixxxxx~~ Officer authorised by provincial Government in that behalf. Clause (5) of the licence says that the licensee shall not in any one transaction sell foodgrains mentioned in paragraph one in quantities exceeding 20 maunds to any person who does not hold a licence under the Foodgrains Control Order 1942, nor is otherwise authorised to purchase foodgrains in wholesale quantities.

Now the finding of the learned Magistrate is that the accused did contravene this term in the licence with the result that his action was governed by clause (6) of the Foodgrains Control Order 1942. That means that the accused must be deemed to have contravened the clause (5) of this order by contravening the provisions of the licence, and sub-rule (4) of rule 81 of the Defence of India Rules says that if any person contravenes any order made under this rule; it must follow therefore that by contravening the terms of the licence the accused contravened the provisions of sub-rule (4) of rule 81 and therefore this contravention was punishable by sub-rule (4) of rule 81.

It is next contended that the learned Magistrate had no jurisdiction to try this case. But under section 14 of the Defence of India Act every Magistrate in the district where the offence is committed has got power to try the offences which are committed within the territorial jurisdiction. Under ~~xh~~ the general provisions of the Criminal Procedure Code a Magistrate has powers even though he may not be able to impose the maximum sentence under sub-rule (4) of rule 81 of the Defence of India Rules.

The appeal is allowed, the accused are convicted of the offence under rule 81(4) of the Defence of India Rules and each of them is sentenced to a fine of Rs.300/-, in default rigorous imprisonment for a fortnight.

By the Court
Sd/- Y.S.Joshi.

16/4/45 ~~xxxxxxxxxxxxxx~~

Judgment recorded by the High Court in Criminal Appeal No. 571 of 1944 (By the Government of the Province of Bombay) in the case of Imperator Vs. Balu Ganesh Gurav No. 1.

The Assistant Government Pleader for the Appellant, the Govt. of the Province of Bombay.

Messrs. R.A. Jahagirdar and D.M. Athavale, Advocate for the accused.

11th July 1945.

(Coram:-Weston and Bavdekar, JJ.)

Oral Judgment (Per Bavdekar JJ.):- This is an appeal by the Government of Bombay against the acquittal of Balu Ganesh Gurav of Gunji, who was tried by the learned Additional Sessions Judge of Belgaum with the aid of assessors of an offence under section 302 of the Indian Penal Code, and by a Jury before the same learned Judge of an offence under section 201 of the Indian Penal Code. Section 34 of the Indian Penal Code was mentioned in the charge in connection with both the offences.

Accused No. 1, Balu, is the adopted son of one Narayan Gurav. The person, with whose murder the accused was charged, was named Ravalu, and he claimed that he was the adopted son of Narayan having been taken in adoption by his second wife Savitri after his death. Accused No. 1 himself claimed to be the adopted son of the said Narayan. It was his case that Ravalu was not the adopted son of Narayan, and he himself had been taken in adoption by the younger wife. There was litigation between the parties, which ultimately came up to this Court, and on the 24th of June 1937 this Court held that Ravalu was the adopted son of Narayan, and dismissed the appeal, which had been filed by accused No. 1. The prosecution story was that subsequently there were proceedings taken by Ravalu in order to obtain possession of property of his adoptive father Narayan. Accused No. 1 had, therefore, motive to kill him and killed him on the 24th of May 1943, while he was returning from Khanapur, where he had gone on the

previous day for working for abhania of Khanapur, namely, Shankar Dattatraya.

It is no longer in dispute that Ravalu had gone to Khanapur on the 23rd of May 1943. That was a Sunday, and he used to go to Shankar Dattatraya every Sunday, It was the evidence of Shankar Dattatraya that Ravalu had accordingly gone to him on the 23rd of May. He did not return therefrom, and has not been heard of since by his adoptive mother, with whom he used to live. As Ravalu did not return home for about a week after the 23rd of May, his adoptive mother Savitri informed the police about his disappearance on the 31st of May 1943. She mentioned therein as to when Ravalu had left, and stated that on the 30th of May she went to Shankar Dattatraya, and found from him that Ravalu had left Khanapur with the intention of returning to his village, namely, Gunji. She said that she had subsequently made inquiries at other places also, but did not find any trace of him. This report did not contain anything else of importance, except that it mentioned a description of Ravalu and gave also particulars of the articles which he had upon him when he left his house on the 23rd of May.

Subsequently on the 5th of June 1943 a villager found within the limits of the village of Ganga wali a skeleton near which was lying a shirt. He thereupon informed the police patil of his village who then made a report about the mattee to the Sub-Inspector of Khanapur. The shirt which was found lying near the corpse was identified by Ravalu's mother as the shirt of her son; but there was nothing to show whether Ravalu had been murdered assuming of course that the skeleton was his, or he had met with an accidental death. The Sub Inspector, therefore, registered an accidental death, and started inquiries under section 174

of the Criminal Procedure Code. Nothing happened thereafter till the 15th of June 1943. Upon that date accused No. 1 a against whom avitri had shown suspicion, and two other persons, who were also tried by the learned Additional Sessions Judge and by the Jury before him of the same offences as accused No. 1, were produced before the Sub-Inspector of Police Khanapur. Accused No. 1 is alleged to have then taken the police and panchas to forest No. 106 within the limits of the village of Navge, and took out from a collection of chari trees there a gunny bag. He then produced a blanket from a net formed by langana at a distance of about 16 cubits from the place from which he took out the gunny bag. Then he dug out with a stick a spot which was about 23 cubits to the east of the 'chari' trees, and took out a large knife. He then produced a small piece of burnt dhoti near which there were found some marks showing that some clothes were burnt there, the same place being at a distance of about 22 cubits to the n north of the same 'chari' trees as I have mentioned above. Finally, he took the police and the panchas to forest No. 47 within the limits of Gangwali village to the east of the Khanapur-Ganji Road, and showed a hole near an anthill. Accused No. 1 dug and took out earth from the hole and brought out a decomposed human skull, which appeared to be the skull of a male human being. Accused No. 1 is also alleged to have produced certain other things, but we are not concerned with them in thi appeal, because he has been acquitted. It was the evidence of the Sub-Inspector that accused No. 1 was willing to make a confession on the 15th of June. He said, however, that he did not send him for a confession, because he wanted him for the purposes of investigation. It was his case that he actually sent accused No. 1 to the First Class Magistrate at Khanapur on the 23rd of June asking both for a remand to custody and for recording of his confession. The prosecution case against accused No. 1 depended principally upon the confession, which was recorded by the First Class Magistrate, Khanapur, on the 29th of June 1943. In the confession accused No. 1 mentioned the civil dispute between him and Ravalu, and said that

Ravalu had also made an application to get possession of the lands of Narayan. He felt that he had owing to Ravalu's adoption suffered a great loss,which he put at about Rs. 10000/-having also lost two pieces of land which ~~he~~ belonged to him on account of the litigation. So he decided that he would kill Ravalu. Therefore on the Monday upon~~y~~ which he is alleged to have been killed,accused No. 1 knowing that Ravalu would return from Khanapur to his village Gunji,lay-in-wait for him with a knife,which he had already with him.He had a cycle with hi,and kept the knife in the bag of the cycle. He got down from it when he say Ravalu coming,and pretended that he was inflating the tubes of his cycle.When Ravalu came up to him,he got up, held him fast and threw him down,Ravalu's head dashed against the stones of a culvert.He bled,and after some time he because metionless and life was extinct,Accused No. 1 said further that he then took the knife from his bag,and separated the skull from the body.He then dragged the body away from the road,and threw it at a distance of about 10 to 15 what are called fathoms,in the translation from the road. He then took the skull,put it in a bag which the deceased had with him and took it into the jungle about ½ furlong from the road and threw it into a hollow ant-hill. He burnt the dhotar and turban of the deceased, and threw away the knife in a shrub near the place where he burnt the clothes.

Accused No. 1 retracted the confession upon which the case against him was based before the committing Magistrate and contended that the police did not allow him to have any ffod for two days after his arrest. They did not also allow him to take sleep by throwing water on his eyes.He said that his hands were tied to a wooden bemm, and he was threatened that in case he told any body about what had been done to him,he would again be involvedin some more trouble. That was why he consented to make a confession. He denied having producedbefore the police andthe panchas

the skull or the other articles which the prosecution alleged have been produced by him, and also denied that the knife which the prosecution led evidence to show belonged to him was his.

The Jury, who tried the accused No. 1 of the offence under section 201 and read with section 34, were of the unanimous opinion that he was not guilty of the offence with which he was charged. As assessors they gave their unanimous opinion that he was not guilty of the offence under section 302 when read with section 34. They said that they were not convinced with the evidence which was produced before them with regard to the painting out of the property, and they thought that his confession was not reliable.

In order to bring home to accused No. 1 his guilt, the prosecution had to prove in the first instance that the skeleton which was found near the Khamapur-Gunji Road and the skull which was alleged had been taken out by accused No. 1 belonged to one and the same person, and that person was Ravalu who is alleged to have been murdered. They had then to prove that Ravalu died owing to violence, and finally they had to prove that accused No. 1 was the person, or one of the persons, who committed his murder.

So far as the question whether the skeleton and the skull belonged to the same person is concerned, neither the skeleton nor the skull was in an identifiable state, and the prosecution depended upon the evidence of an amtomist, who was examined in support of their case. But his evidence admittedly was not definite, because he said that they might belong to one and the same person, and would not go any further. The prosecution pointed out that there was found near the skeletion a shirt, which was identified by Ravalu's mother Savitri as his, in order to show that the skeleton belonged to Ravalu. It does not appear, however, that this shirt had got any particular marks upon it, and the only particulars which might tend to show that it belonged to Ravalu were brought about in cross-examination, when his

mother said that she identified the shirt partly because of the blood-stains on it and partly because it contained betel nuts in a pocket of his shirt. This evidence is not therefore sufficient to prove the identification of the skeleton which was found as the skeleton of Ravalu. The prosecution relied, besides, upon a blanket and a poece of dhoti which were shown by accused No. 1. Accused No. 1 mentioned in his confession that the piece was of the dhoti which belonged to the deceased and which was burnt by him. This piece of dhoti as well as the blanket were identified by Savitri. The blanket was besides also identified by Shankar Dattatraya with whom Ravalu used to work. It is obvious, however, that the small piece of dhoti, which is about 8 fingers in length and 6 fingers in breadth and which had not any mark upon it except that it had got a border of Rui-ful pattern, which is a very common pattern, is not an article capable of identification. The blanket was sewn in the middle, and it had a ring which was used in order to make up a 'khol' of it for use in order to give protection from rain. But the blanket could hardly be identified because of the position of these two holes, then there might have been some possibility of saying that it was of Ravalu, but the mother does not say what she identified the blanket from the position of the holes and so far as Shankar Dattatraya is concerned, even though he is an independent witness, he attempted to identify a singlet which was supposed to have belonged to the deceased, and which even Ravalu's mother Savitri could not identify. It is obviously not safe therefore to rely upon his evidence for the identification of the blanket. The learned Assistant Government Pleader, who appears for the Crown, was therefore forced to this position that even in order to show that the skeleton and the skull belonged to Ravalu, it was necessary to have recourse to the confession, in which, of course, accused No. 1 has mentioned that the person whom he killed was Ravalu, and he

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has also mentioned that the skeleton which was found by the police subsequently and the skull which he showed to them were also of Ravalu.That as a matter of fact is also the case with regard to the cause of Ravalu's death assuming that the skeleton and the skull belonged to him.The anatomist. who was examined in support of the prosecution case, mentions in this connection certain evidence of destruction which he found upon the bones of the skull,lower jaw, ribs and some of the bones of the extremities, but what exactly these marks of destruction were is not clear, and the prosecution did not care to get this matter made clear in the examination of the doctor.The learned Assistant Government Pleader suggests that accused No. 1 mentions in his confession that he severed the skull of Ravalu from his body with a knife, and the evidence which the anatomist saw may have been in the form of marks left by the knife. But this is, in the absence of any specific evidence from the anatomist, now mere guess work. We have, therefore, now this position that in this case it is necessary to have recourse to the confession not only in order to show that accused No. 1 is the murder of Ravalu, but in order to show both that Ravalu has died and also in order to show that Ravalu's death was due to violence.

I shall now come to the confession itself.This confession was made,when it was known that accused No. 1 had a motive to kill Ravalu.According to the prosecution evidence, accused No. 1 had also,on the 15th of June 1943, produced before the police and the panchas a skull,which,they alleged belonged to Ravalu,and a blanket burnt pieces of his dhoti and a bag which were alleged to belong to him. I have already mentioned that the identification of none of these articles is satisfactory but then that may not deter an accused person from confessing .There was this against accused No. 1, when he made the confession, evidence which might have persuaded him to make a confession. It was prepared to make confession on the 16th of June 1943. He did not, however, send accused No. 1 to a Magistrate for recording his confession admittedly

till the 23rd of June. He said that he did not do so, because accused No. 1 was wanted for further investigation. But it was not alleged that accused No. 1 made any discovery after the 15th of June, and it is conceded that by that date all the important evidence, which the prosecution collected against the accused in the present case, had been obtained; that even in these circumstances accused No. 1 was not sent to a Magistrate for confession for secen days more is the first circumstances against the confession. There was some contention made before the learned Additional Sessions Judge that accused No. 1 was not sent to the Magistrate for confession even on the 23rd. That was basedupon the fact that the Magistrate who recorded the confession, and who was aparently First Class Magistrate and Mamlatdar of Khanapur at the time he recorded it said that accused No. 1 was not in his custody at the time when he recorded the confession as the Sub-Inspector of Khanapur tried to make it out. We are inclinded to think however that the Sub-Inspector in this case is right because it appears from Ex. 31, a letter written by the Sub. Inspector to the Resident Magistrate of Belgaum that on that date he had sent the accused in the ase to the First Class Magistrate of Khanapur. No doubt, the letter Ex. 31 embodies a statement by the Sub-Inspector of the nature of an admission in one's own favour. But there is no reason to suspect the genuineness of this letter. and the Sub-Inspector would not on the 23rd of June 1943, make a statement that he had sent the accused to the First Class Magistrate of Khanapur and the accused were in his charge unless he as a matter of fact sent the accused to the Magistrate. In our opinion, the explanation of the evidence of the Magistrate is to be found in the fact that he was perhaps not in the Head Quarters at the time when the accused arrived. He was, as a matter of fact at Bidi when he recorded the confession. Usually when as accused person arrives at the Head Quarters of a Magistrate he is taken to the sub-jail in charge of the Mamlatdar and the Taluka

Magistrate of which the Awal Karkun is the sub-jailor. But evenso the police custody of accused No. 1, as I have mentioned already, for a considerable time after he was said to have been willing to confession is to be taken into consideration in assessing the voluntary character and the truth of his confession. The second point when which has to be noticed about the concession is that the Magistrate, who recorded it, said that he had given accused No. 1 sufficient time for reflection, but he was not able to say what time as a matter of fact he gave, though we do not wish to attach too much importance to this consideration. Then we come to the confessionnitself. Accused No. 1 said in that confession, after mentioning the motive which he had, that he decided to kill Ravalu and went to the Khanapur-Gunji Road with a knife which he already hadin his possession. In the confession itself, however, he said that he did not use the knife to kill him. On the other hand he said that he apparently kept the knife in the bag which he had upon the cycle and caught hold of Ravalu and threw him down apparently with force upon the ground when Ravalu's head dashed against the culvert, he bled and after some time he died, Now, in a confession of a co-accused who was tried at the trial there was a mention made that accused No. 1 started using the knife upon Ravalu immediately after he threw down Ravalu. That is obviously a much more natural story. The learned Assistant Government Pleader contends, however, that it may be that accused No. 1 originally intended to stab the deceased with the knife but subsequently changed his mind, but the important thing is that not only had he not, according to the confession which he made, used the knife, but he had not, if the confession were to be believed even taken out the knife from the bag in which he was carrying it. This we find somewhat difficult to believe. The learned Additional Sessions Judge was besides inclined to doubt whether if accused No. 1 had killed Ravalu by dashing him with force against the culvert, he would subsequently proceed to separate from the body the skull with a knife. But leaving that aise for the moment, it would appear

according to the confession of accused No. 1 that after he separated the skull from the body he took the skull and buried it in a place near the ant-hill from which it was alleged that subsequently he dug it out before the police and the panchas. Accused No. 1 does not mention that he did anything else except that he burnt a dhotar and a turban which the deceased had, and yet when the police patil of Khanapur saw the corpse he found what was subsequently recognised as the shirt of Ravalu lying somewhere near the road. Now, the prosecution suggested that after the deceased's corpse was thrown by accused No. 1 from the Khanapur-Gunji Road, wild animals might have eaten or attempted to eat portions of the corpse, but if they did so, and if, in order to emble them to do so, they tried to get rid of the shirt, then one would find that the shirt would be torn in number of places. The shirt which was found near the corpse appears to have been torn only in two if not only in one place. But in any case it is obvious that the wild animals would not be able to get the shirt off from the skeleton, because the shirt had sleeves, and even though the skull had been taken away, the shirt would not come out owing to the efforts of the wild animals to eat the corpse. It is obvious therefore that whoever the murderer was had for some reason taken out the shirt which was found near the skeleton, assuming the shirt belonged to the person to whom the skeleton belonged. We find no mention, however, in the confession of accused No. 1 as to this shirt. He could not possibly forged what he had done with regard to it, if he had, as a matter of fact, taken it out himself, He may possibly forget the shirt at the place where the corpse was, but in that case one would expect that he would say that with a view to burn the clothes of Ravalu he had taken off his shirt and his dhoti, and he then went and burnt the dhotar and the turban, but apparently owing to a mistake the shirt remained behind and he did not, therefore,

burn it. As against these considerations, it has been pointed out on behalf of the Crown by the learned Assistant Government Pleader that accused No. 1 produced before the police and the panchas a knife which has been satisfactorily identified to belong to him, and when this knife was sent to the Chemical Analyser and the Imperial Serologist stains of blood were found upon it though the stains of blood were so disintegraed that the Imperial Serologist could not say whether it was human blood or not. No doubt it is true that accused No. 1 produced knife before the police and the panchas. That knife was identified by one Babu who said that he had made it for accused No. 1, and he could say that that was the knife which he made for accused No. 1, because he had never made any other knife like the knife which accused No. 1 had produced. Accused No. 1 was asked in his examination by the learned Sessions Judge as to why this Babu should give false evidence against him, and he could not give any satisfactory explanation. We have no doubt, therefore, that this evidence of Babu is true, and the knife which were was before the learned Additional Sessions Judge was the knife of accused No. 1. The difficulty however, with regard to holding this circumstance about the production of a knife as sufficient to corroborate the confession of accused No. 1 is that where as accused No. 1 said in his confession that after he had committed the murder he threw the knife in a thicket, according to the panchnama he had to dig out the knife. It is true that the panchnama mentions that he only dug with a stick. It does not appear therefore as if the knife was buried very deep or very satisfactorily. But evenso the fact remains that there is a discrepancy between the evidence on the one hand as to the circumstances in which the knife was found the production of which has been relied upon in order to corroborate the confession and the confession itself inasmuch as the knife was found buried,

though it may be only to a very slight extent, whereas accused No. 1 said in his confession that he threw his knife in a thicket. A confession of this type in which accused no. 1 admittely has not mentioned any detail not known to the police before can in regard to which we find the improbabilities and the discrepancies which are mentioned above. is not. in our opinion, a satisfactory basis upon which to convict an accused person; much less can we interfere with an order of acquittal which has been obtained by accused No. 1 relying upon such a confession. We, therefore, decline to interfere with the order of acquittal passed by the learned Additional Sessions Judge, Belgaum. The appeal is dismissed.